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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

7/22/94

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Office of the General Counsel
Room 610
1919 M Street. N.W.
Washington, DC 20554

Re: Comments on the modification of the criteria used in comparative hearings to award construction permits for new broadcast facilities. GC Docket No. 92-52

Dear Secretary:

The following are my comments regarding reforming the criteria used to select among mutually exclusive applicants for new broadcast facilities:

First let's review the comments of Circuit Judge Williams in the Bechtel case No. 92-1378 namely:

"We noted that an agency relying on a previously adopted policy statement rather than a rule must be ready to justify the policy 'just as if the policy statement had never been issued'"

The FCC neglected Bechtel's mandate to "demonstrate why its focus on integration is still in the public interest, if indeed it is, and to respond to Bechtel's claim that "her proposal...would serve the public interest better than her competitors' integrated proposals."

In striking down integration the judge cited Lack of Permanence "Whatever the benefits of integration, they would last only if the Commission insisted licensees maintain the owner-manager relation or if successful licensees tended to adopt the integrated instruction of this own free will. Neither appears to be the case." And Lack of Evidence "despite its twenty-eight years of experience with the policy, the commission has accumulated no evidence to indicate that it achieves one of the benefits that the Commission attributes to it. As a result the Commission ultimately rests its defense of the integration criteria on the deference that we owe its "predictive judgments"."

"As Bechtel's counsel observed at oral argument, that fact that corporate America generally does not insist upon integration of ownership and management casts doubt on the Commission's rosy speculations about the benefits

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"The Commission is reluctant to impose on applicants any one view of what constitutes a well managed broadcast venture."

"The Commission generally deems an applicant's integration proposal more important than his past broadcast record, his proposed program service or the efficiency of his proposed use of the frequency."

"Qualitative factors cannot overcome a 'clear' quantitative advantage--which the Commission defines as a difference of at least 1250. An applicant whose proposed owner-manager knows nothing about either broadcasting or the community but promises to work a 40 hour week for example, will handily win an integration preference over one whose proposed owner-manager is a veteran broadcaster who has spent his whole life in the station's community but proposes to work 36 hours a week at the station (scoring only 8100)

In order FW7 the judge states "Indeed, even the maximum qualitative credit for experience is small. Northern Sun Corp., 100 F.C.C.2d 889, 892 (applicant loses even through its proposed integrated owner had 31 years of broadcast experience and the other applicant's principals had no broadcast experience at all). Under extremely limited circumstances, past broadcast record can be a separate comparative criterion rather than a minor enhancement of the integration criterion.

It is clear to me that the judge in the Bechtel case continuously referred to broadcast background, broadcast experience and past broadcast record of something more than minor importance. Therefore I recommend the following:

1. The existing comparative criteria should be modified to give more weight to (a) broadcast experience and (b) broadcast background both of which should be given major rather than minor weight as the criteria now stands.

The following preferences should be as follows:

Civic involvement	Moderate
Past broadcast record	Substantial
Minority applicant	Substantial

Sincerely,


Gary E. Willson